



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,412	03/20/2002	Herbert Markl	02481.1781	5276
5487	7590	12/20/2005	EXAMINER	
ROSS J. OEHLER AVENTIS PHARMACEUTICALS INC. ROUTE 202-206 MAIL CODE: D303A BRIDGEWATER, NJ 08807			NAFF, DAVID M	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/088,412

Applicant(s)

MARKL ET AL.

Examiner

David M. Naff

Art Unit

1651

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 05 December 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: _____.

Claim(s) rejected: 39-50, 52-82 and 84-92.


Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


David M. Naff
Primary Examiner
Art Unit: 1651

Continuation of 3. NOTE: New issues for consideration are raised by amendments to claims 39, 45 and 70. In line 6, claim 39 has been amended to recite "culture vessel space". However, it appears this should be "culture fluid space" since the module cannot contain a culture vessel space, which is space in the culture vessel. In line 10 of the claim "the culture fluid space" does not have clear antecedent basis since line 6 recites "culture vessel space". In the last two lines of the claim, requiring introducing a second gas into the culture fluid "in the membrane module" is confusing since line 10 as amended requires culture fluid in the culture fluid space. Is introducing in the module in the culture fluid space or some other part of the module? Claim 45 is unclear as amended by requiring supplying the dialysis fluid space or the culture fluid space with the second gas since in claim 39, the second gas is introduced in the culture fluid in the module. Therefore, the second gas cannot be introduced only in the dialysis fluid space as encompassed by the alternative now required by claim 45. Amending claim 70 to require a dialysis membrane "having internal spaces", and an outlet being located in one of the internal spaces raises new issues for consideration since a membrane having internal spaces with an outlet in one internal space has not been previously claimed..

Continuation of 11. does NOT place the application in condition for allowance because: The arguments are unpersuasive. While Portner et al may disclose that single-vessel dialysis reactors were proposed as an alternative to the two-vessel arrangement, this does make unobvious supplying air to cells in the dialysis module in Fig 2a of Portner et al as suggested by Portner et al disclosing supplying air to cells in culture fluid in contact with a dialysis membrane in Fig 3a. There is seen nothing to lead one to believe air cannot be supplied to cells in culture fluid in the dialysis module of Fig 2a analogous to supplying air to cells in culture fluid in contact with a dialysis membrane in Fig 3a. Portner et al disclose the problem that suspended cells can suffer from oxygen limitation when pumped through the external module. Supplying oxygen to cells in the module would have been clearly an obvious way of overcoming the oxygen limitation problem since Fig 3a shows supplying oxygen to cells on one side of a dialysis membrane. The rejection is not based on supplying oxygen to the culture chamber of Fig 3b of Portner et al, but on supplying air the cells in the module of Fig 2a. Because the single-vessel reactor of Figs 3a and b may have certain advantages over the two-vessel reactor of Fig 2a does not make unobvious supplying air to the module of the two-vessel reactor for the expected function of the air to supply oxygen to cells in the module. The problems of the two-vessel reactor exposing the cells to stress due to pumping and requiring sophisticated control to balance liquid levels as disclosed by Portner et al will also be problems when using a two-vessel reactor as encompassed by the present claims. The claims require nothing that will overcome these problems. The claims address only the problem disclosed by Portner et al of cells suffering oxygen limitation in the module. This problem is addressed in the claims in the way suggested by Portner et al, i.e. by supplying air to the cells in the module.